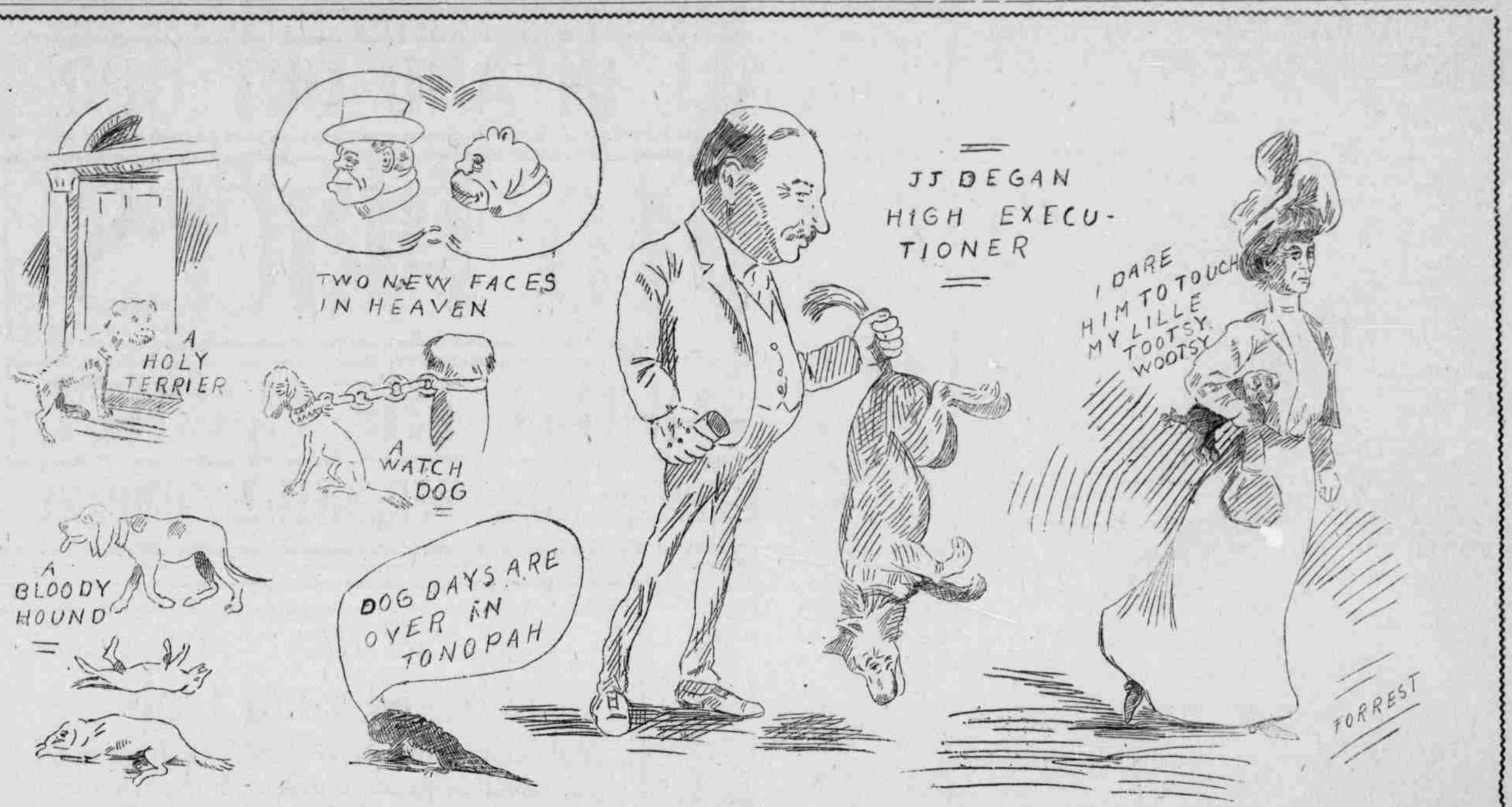

TAFT'S MESSAGE TO CONGRESS

(Continued from Page 1.)

omission to quote the proper rate, or in consequence of a misstatement of the rate, the carrier shall be liable to a penalty in some reasonable amount, say $250, to accrue to the United States and to be recovered in a civil action brought by the appropriate district attorney. Such a penalty would compel the agent of the carrier to exercise due diligence in quoting the applicable legal rate and would thus afford the shipper a real measure of protection, while not opening the way to collusion and the giving of rebates or other unfair discrimination. * * * * *

Under the existing law the commission may not investigate an increase in rates until after it shall have become effective; and although one or more carriers may file with the commission a proposed increase in rates or change in classifications, or other alterations of the existing rates or classifications, to become effective at the expiration of thirty days from such filing, no proceeding can be taken until after it becomes operative. On the other hand, if the commission shall make an order finding that an existing rate is excessive and directing it to be reduced, the carrier affected may, by proceedings in the courts, stay the operation of such order or reduction for months and even years.

It has therefore been suggested that the commission should be empowered, whenever a proposed increase in rates is filed, at once to enter upon an investigation of the reasonableness of the increase and to make an order postponing the effective date of such increase until after such investigation shall be completed. To this much objection has been made on the part of carriers. They contend that this would be, in effect, to take from owners of the railroads the management of their properties and to clothe the interstate commerce commission with the original rate making power—a policy which was much discussed at the time of the passage of the Hepburn act in 1905-6, which was then, and has been, distinctly rejected, and in reply to the suggestion that they are able, by resorting to the courts, to stay the taking effect of the order of the commission until its reasonableness shall have been investigated by the courts, whereas the people are deprived of any such remedy with respect to action by the carriers, they point to the provision of the interstate commerce act providing for restitution to the shippers by carriers of excessive rates charged in cases where the order of the commission reducing such rates are affirmed. It may be doubted how effective this remedy is. * * * * * *

I therefore recommend that the interstate commerce commission be empowered, whenever any proposed increase of rates is filed, at once, either on complaint or of its own motion, to enter upon an investigation into the reasonableness of such change, and that it be further empowered in its discretion to postpone the effective date of such proposed increase for a period of exceeding sixty days beyond the date when such rate would take effect. If, within that time, it shall determine that such increase is unreasonable, it may then, by its order, either forbid the increase at all or fix the maximum beyond which it shall not be made. If, on the other hand, at the expiration of this time, the commission shall not have completed its investigation, then the rate shall take effect precisely as it would under the existing law, and the commission may continue its investigation with such results as might be realized under the law as it now stands.

The claim is very earnestly advanced by some large associations of shippers, that shippers of freight should be empowered to direct the route over which their shipment should pass to destination, and in this connection it has been urged that the provisions of section 15 of the interstate commerce act, which now empowers the commission, after hearing on complaint, to establish through routes and maximum joint rebates to be charged, etc., when no reasonable or satisfactory through route shall have been already established, be amended so as to empower the commission to take such action, even when one existing reasonable and satisfactory route already exists, if it be possible to establish additional routes. This seems to me to be a reasonable provision. I know of no reason why a shipper should not have the right to elect between two or more established routes as to which the initial carrier may be a party and to require his shipment to be transported to destination over such route or routes as he may designate for that purpose. However, in the exercise of this right, the shipper should be subject to such reasonable regulations as the interstate commerce commission may prescribe.

The republican platform of 1908 declared in favor of amending the interstate commerce law but so as always to maintain the principle of competition between naturally competing lines and avoiding the common control of such lines by any means whatsoever. One of the most potent means of exercising such control has been through the holding of stock of one railroad company by another company owning a competing line. This condition has grown up under express legislative power conferred by the laws of many states, and to attempt now suddenly to reverse that policy so far as it affects the ownership of stocks heretofore so acquired, would be to inflict a grievous injury, not only upon the corporations affected, but upon a large body of the investment holding public. I, however, recommend that the law shall be amended so as to provide that, from and after the date of its passage, no company subject to the interstate commerce commission shall directly or indirectly acquire any interests of any kind in capital stock or purchases or lease any railroad or any other corporation which competes with it respecting business to which the interstate commerce act applies. But especially for the protection of the minority stockholders in securing to them the best market for their stock, I recommend that such prohibition be coupled with a proviso that it shall not operate to prevent any corporation which, at the date of the passage of such act, shall own not less than one-half of the entire issue and outstanding capital stock of any other railroad company, from acquiring all or the remainder of such stocks, or to prohibit any railroad company which, at the date of the enactment of the law, is operating a railroad or any other corporation under lease, executed for a term of not less than twenty-five years, ownership of the demised railroad; but that such provision shall not operate to authorize or validate the acquisition through stock ownership or otherwise of a competing line or interest therein in violation of the anti-trust or any other law. * * * * * *

The question has arisen in the operation of the interstate commerce employers' liability act as to whether suit can be brought against the employer company in any place other than that of its home office. The right to bring the suit under this act should be as easy of enforcement as the right of a private person not in the company's employ to sue on an ordinary claim, and process in such suits should be sufficiently served if upon the station agent of the company, upon whom service is authorized to be made, to bind the company in ordinary sections arising under the state laws. Bills for both the foregoing purposes have been considered by the house of representatives and have been passed and are now before the interstate commerce committee of the senate.

I earnestly urge that they be enacted into laws.

Anti Trust Laws Federal Incorporation.

There has been a marked tendency in business in this country for forty years last past toward combination of capital and plant in manufactures, sale and transportation. The moving causes have been several.

First, it has been rendered possible great economy; second, by a union of former competitors it has reduced the probability of excessive competition; and, third, if the combination has been extensive enough and certain methods in the treatment of competitors and customers have been adopted, the combiners have secured a monopoly and complete control of prices or rates.

A combination successful in achieving complete control over a particular line of manufacture has frequently been called a "trust." I presume that the derivation of the word is to be explained by the fact that a usual method of carrying out the plan of the combination has been to put the capital and plants of various individuals, firms or corporations, engaged in the same business, under the control of trustees.

The increase in the capital of a business for the purpose of reducing the cost of production and effecting economy in the management has become as essential in modern progress as the change from the hand to the machine. When therefore we come to construe the object of congress in adopting the so-called "Sherman anti-trust act" in 1890, whereby, in the first section every contract, combination in the form of a trust or otherwise, or conspiracy in restraint of interstate or foreign trade, or commerce, is condemned as unlawful and made subject to indictment and restraint by injunction; and whereby, in the second section every monopoly, or attempt to monopolize, and every combination or conspiracy with other persons to monopolize, any part of interstate trade or commerce, is denounced as illegal and made subject to similar punishment or restraint, we must infer that the evil aimed at was not the mere bigness of the enterprise but it was the aggregation of capital and plants with the express or implied intent to restrain interstate or foreign commerce, or to monopolize it in whole or in part. * *

The second section of the act, is a supplement of the first. A direct restraint of trade, such as is condemned in the first section, is successful and used to suppress competition, is one of the commonest methods of securing a trade monopoly, condemned in the second section.

It is possible for the owners of a business of manufacturing and selling useful articles of merchandise so to conduct their business as not to violate the inhibitions of the anti-trust law, and yet secure themselves the benefits of the economies of management and of the production due to the concentration under one control of large capital and many plants. If they use no other inducement than the constant low price of their product and its good quality to attract custom and their business is a profitable one, they violate no law. If their actual competitors are small, in comparison with the total capital invested, the prospect of investments of capital by others in such a profitable business is sufficiently near and potential to restrain them in the prices at which they sell their product. But if they attempt by a use of their preponderating capital and by a sale of their goods temporarily at unduly low prices, to drive out of business their competitors, or if they attempt by exclusive contracts with their patrons and threats of non-dealing except upon such contracts, or by other methods of a similar character, to use the largeness of their resources and the extent of their output, compared with the total output, as a means of compelling custom and frightening of competition, they then disclose a purpose to restrain trade and to establish a monopoly and violate the act.

The object of the anti-trust law was to suppress the abuses of business of the kind described.

It was not to interfere with a great volume of capital which concentrated under one organization, reduced the cost of production and made its profit thereby, and took no advantage of its size by methods akin to duress to stifle competition with it. * * * *

Following the sugar trust decision, however, there have come along, in the slow but certain course of judicial disposition, cases involving a construction of the anti-trust statute, and its application, until now they seem to embrace every phase of that law which can be practically presented to the American public, and to the government for action. They show that the anti-trust act has a wide scope and applies to many combinations in actual operation, rendering them unlawful and subject to indictment and restraint. **

Generally, in the industrial combinations called "trusts," the principal business is the sale of goods in the many states and in foreign markets; in other words, the interstate and foreign business far exceed the business done by any one state. This fact will justify the federal government in granting a federal charter to such a combination to make and sell, in interstate and foreign commerce, the products of useful manufacture, under such limitations as will secure a compliance with the anti-trust law. It is possible so to frame a statute that, while it offers protection to a federal company against harmful, vexatious and unnecessary invasion of the states, it shall subject it to reasonable taxation and control by the states with respect to its purely local business. * *

I therefore recommend the enactment by congress of a general law providing for the formation of corporations to engage in trade and commerce among the states and with foreign nations, protecting them from undue interference by the states and regulating their activities so as to prevent the recurrence, under national auspices, of those abuses which have arisen under state control. Such a law should provide for the issue of stock of such corporations to an amount equal only to the cash paid in on the stock; and if the stock be issued for property, then at a fair valuation, ascertained under approval and supervision of federal authority, after a full and complete disclosure of all the facts pertaining to the value of such property and the interest therein of the persons to whom it is proposed to issue stock in payment of such property only of such corporations to the same taxation as is imposed by the states, within which it may be situated, upon other similar property located therein, and it should require such corporations to file full and complete reports of their operations with the department of commerce and labor at regular intervals.

Corporations organized under this act should be prohibited from acquiring and holding stock in other corporations (except for special reasons upon approval by the proper federal authorities) thus avoiding the creation, under national auspices, of the holding company, with subordinate corporations in different states, which has been such an

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